

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Case No. 19-cv-07702-LJL

HUER HUANG,
LIANQIN LU,
GLORIA PEREZ MENDEZ,
CLARA FLORES,
REYES PEREZ GUERRERO,
ARAGON CARDOSO CRUZ, and
MAXIMINO RAYMUNDO,
*on behalf of themselves, and on behalf others similarly
situated in the Proposed FLSA Collective and Potential
Rule 23 Class*
HUI ZHEN HUANG,
JUAN LI, and
HAI HUA ZHAI,
*on behalf of themselves, and on behalf of others similarly
situated in the Potential Rule 23 Class*

**JOINT PRETRIAL
ORDER**

Plaintiffs,

-against-

SHANGHAI CITY CORP d/b/a Joe's Shanghai;
SHANGHAI DUPLICATE CORP d/b/a Joe's Shanghai;
EAST BROTHER CORP d/b/a Joe's Shanghai; and
SHANGHAI ORIGINAL INC. d/b/a Joe's Shanghai;
KIU SANG SI a/k/a Joseph Si, a/k/a Joe Si,
YIU FAI FONG, TUN YEE LAM a/k/a Peter Lam,
GUI BING SHI, SOLOMON C. LIOU, MIMI SI,
WILLIAM KO, LILLIAN LIOU, CHENG KUENG LIU,
YUN CAI, JOHN ZHANG, and TERRY HO,

Defendants.

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The Honorable Lewis J. Liman, U.S. District Court Judge:

The parties, having conferred pursuant to Fed. R. Civ. P. 16 and Hon. Lewis J. Liman's Individual Rules of Practice, the following matters have been agreed to by counsel, and are hereby ordered: ¹

¹ This document incorporates submissions from Plaintiffs and Defendants. Each party was responsible for their own section.

I. CAPTION

LIANQIN LU,
GLORIA PEREZ MENDEZ,
CLARA FLORES,
REYES PEREZ GUERRERO,
ARAGON CARDOSO CRUZ, and
MAXIMINO RAYMUNDO,
*on behalf of themselves, and on behalf others similarly
situated in the Proposed FLSA Collective and Potential
Rule 23 Class*

HAI HUA ZHAI,
on behalf of himself, and on behalf of others similarly
situated in the Potential Rule 23 Class
ALBERTO SALDIVIA, and
BINGBO XU,

Plaintiffs,

-against-

SHANGHAI CITY CORP d/b/a Joe's Shanghai;
EAST BROTHER CORP d/b/a Joe's Shanghai; and
SHANGHAI ORIGINAL INC. d/b/a Joe's Shanghai;
KIU SANG SI a/k/a Joseph Si, a/k/a Joe Si,
YIU FAI FONG,
TUN YEE LAM a/k/a Peter Lam,
GUI BING SHI,
SOLOMON C. LIOU, and
WILLIAM KO,

Defendants.

Dismissed Parties

- 1) On or about May 11, 2020 Judge Liman rendered an Opinion and Order dismissing all claims against Chinatown Defendants Shanghai Duplicate Corp., Lillian Liou, Cheng Kueng Liu, Yun Cai, John Zhang, and Terry Ho based on Plaintiffs' failure to allege an employment relationship between said Chinatown Defendants and Named Plaintiffs who worked solely at the Midtown or Flushing restaurant locations (Doc 93).
- 2) The Court dismissed the claims of Named Plaintiffs Huer Huang and Hui Zhen Huang for failing to attend their depositions (Doc 149) and dismissed the claims of Named Plaintiff Juan Li for failing to attend her deposition and answer interrogatories (Doc

164).

- 3) Plaintiffs and Defendant Mimi Si stipulated to the voluntary dismissal of Mimi Si on September 3, 2020, but the stipulation has not been so-ordered. *See* Dkt. Nos. 146, 199. Shanghai Defendants consent to dismissal of Mimi Si.

Opt-In Plaintiffs

On or about October 1 and 19, 2020 the Court issued an Order (Doc 149) and a revised Order (Docs 158 and 159) certifying a conditional collective action of Flushing kitchen workers. Two Flushing employees opted in to the Flushing kitchen worker collective. On February 12, 2021 Alberto Saldivia (“Saldivia”) (Doc 167) and Bingbo Xu (“Xu”) (Docs 168 and 169) opted in to the Flushing kitchen collective.

II. TRIAL COUNSEL

<u>Plaintiffs</u>	<u>Defendants</u>
TROY LAW, PLLC John Troy, Esq. Aaron B. Schweitzer, Esq. Tiffany Troy, Esq. 41-25 Kissena Boulevard, Suite 103 Flushing, NY 11355 Tel: (718) 762-1324 Fax: (718) 762-1342 Email: johnstroy@troypllc.com troylaw@troypllc.com tiffanytroy@troypllc.com	FONG & WONG and WU, PLLC Robert W. Wong, Esq. David B. Horowitz, Esq. 802 64 th Street, Suite 2A Brooklyn, New York 11220 (718) 567-8888 Fax: (718) 567-888 Email: rww@fwatty.com rwong@fwwlawyers.com dh@fwatty.com dh@fwwlawyers.com SHANGHAI CITY CORP. d/b/a Joe's Shanghai, SHANGHAI DUPLICATE CORP. d/b/a Joe's Shanghai, EAST BROTHER CORP. d/b/a Joe's Shanghai, SHANGHAI ORIGINAL, INC. d/b/a Joe's Shanghai, KIU SANG SI a/k/a Joseph Si a/k/a Joe Si, YIU FAI FONG, TUN YEE LAM a/k/a Peter Lam GUI BING SHI, WILLIAM KO, JOHN ZHANG and TERRY HO

III. SUBJECT MATTER JURISDICTION

Joint Statement

This Court has original federal question jurisdiction over this controversy under the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 216(b), and 28 U.S.C. § 1331, and has supplemental jurisdiction over the New York Labor Law (“NYLL”) claims pursuant to 28 U.S.C. § 1367(a).

IV. SUMMARY OF CLAIMS AND DEFENSES

Plaintiff’s Claims Remaining to be Tried

- 1) Whether Defendants violated the FLSA by failing to pay Plaintiffs Lianqin Lu, Gloria Perez Mendez, Clara Flores, Reyes Perez Guerrero, Alberto Saldivia, and Bingbo Xu at a rate equal to or in excess of the minimum wage; 29 U.S.C. § 206;
- 2) Whether Defendants violated the NYLL by failing to pay Plaintiffs at a rate equal to or in excess of the minimum wage; N.Y. Lab. L. §§ 652(1), 652(4), 663(1); 12 N.Y.C.R.R. § 146-1.2;
- 3) Whether Defendants violated the FLSA by failing to pay Plaintiffs Lianqin Lu, Gloria Perez Mendez, Clara Flores, Reyes Perez Guerrero, Alberto Saldivia, and Bingbo Xu overtime for hours worked in excess of forty each week at rates equal to one and one-half times their regular rates or the minimum wage, whichever was higher; 29 U.S.C. § 207(a);
- 4) Whether Defendants violated the NYLL by failing to pay Plaintiffs overtime for hours worked in excess of forty each week at rates equal to one and one-half times their regular rates or the minimum wage, whichever was higher; N.Y. Lab. L. § 663(1); 12 N.Y.C.R.R. § 146-1.4;
- 5) Whether Defendants violated the NYLL by failing to pay Plaintiffs one additional hour’s pay at the basic minimum hourly rate each day when their spreads of time exceeded ten hours; 12 N.Y.C.R.R. § 146-1.6;
- 6) Whether Defendants violated the NYLL by failing to provide Plaintiffs with notices containing their rates of pay and the bases thereof, allowances claimed as part of the minimum wage, regular pay day, employer’s names and “doing business as” names, employer’s physical and mailing addresses, and employer’s telephone numbers, in English and in Plaintiffs’ primary languages, at the times Plaintiffs were hired; N.Y. Lab. L. §§ 195(1), 198(1-b);
- 7) Whether Defendants violated the NYLL by failing to provide Plaintiffs with statements with each payment of wages listing their pay periods, names, employers’ names, employers’ addresses and telephone numbers, rates of pay and bases thereof, allowances claimed as part of the minimum wage, and net wages; N.Y. Lab. L. §§ 195(3), 198(1-d); and

- 8) Whether Defendants breached implied contract under common law for reimbursement of all costs and expenses of vehicles Plaintiff Hai Hua Zhang used as delivery vehicles while employed by Defendants. *See also* 29 C.F.R. § 531.35.

Plaintiff's Claims No Longer Remaining to be Tried

- 1) Whether Defendants violated the NYLL by failing to keep and maintain records; 12 N.Y.C.R.R. § 142-2.6 (this is not an independent cause of action, but can be evidence of bad faith on the part of Defendants);
- 2) Whether Defendants violated the NYLL by failing to keep and maintain records; N.Y. Lab. L. § 162 (this is not an independent cause of action, but can be evidence of hours worked by the Plaintiffs);

Defendants' Defenses

- 1) Whether SHANGHAI CITY CORP. d/b/a Joe's Shanghai, EAST BROTHER CORP. d/b/a Joe's Shanghai, SHANGHAI ORIGINAL, INC. d/b/a Joe's Shanghai, KIU SANG SI a/k/a Joseph Si a/k/a Joe Si, YIU FAI FONG, TUN YEE LAM a/k/a Peter Lam, GUI BING SHI and WILLIAM KO, are Plaintiffs' employers within the meaning of FLSA 29 U.S.C. §203d, NYLL §§2, 190, 651 during the years in question.
- 2) Whether corporate defendants constitute a single and joint employer having a high degree of interrelated and unified operation, and sharing common ownership, common management, centralized control of labor relations, sharing a common record keeping system and common employment records during the years in question.
- 3) Plaintiffs were paid the hourly minimum wage for up to 40 hours per week plus hourly overtime at time and half for all hours over 40 hours per week, if any – and not a flat rate, 29 U.S.C. §§ 206, 207(a)(1); NYLL §§ 650, 652(1), (4); and 12 N.Y.C.R.R. §§ 146-1.2, 146-1.4.
- 4) Defendants dispute all claims made by Plaintiffs as set forth above.
- 5) Defendants dispute Plaintiffs' allegations that Plaintiffs were not compensated in compliance with FLSA and NYLL.
- 6) Defendants dispute Plaintiffs' workdays and work hours.
- 7) Defendants dispute Plaintiffs' claims that Defendants were required to provide Plaintiffs a wage notice or with written notices about the terms and conditions of employment at the beginning of employment and annually thereafter, and/or that Plaintiffs were not provided a wage

notice or with written notices about the terms and conditions of employment at the beginning of employment and annually thereafter, and, if not, whether Defendants made complete and timely payment of all wages to employee not given time of hire notice under 195(1), NYLL 198(1-b)N.Y.L.L. §§195(1)(a) and 198(1-b).

- 8) Defendants dispute Plaintiffs' claims that Plaintiffs were not provided wage statements with each payment of wages, and, if not, whether Defendants made complete and timely payment of all wages to employee not given wage statement under 195(3), NYLL 198(1-d).
- 9) Defendants dispute that Plaintiffs were entitled to spread of hours for all days claimed and to the extent Plaintiffs were entitled to spread of hours, Defendants dispute that Plaintiffs were not paid spread of hours and/or the equivalent thereof, 12 NYCRR §146-1.6.
- 10) Defendants dispute that they failed to provide Plaintiffs adequate meal periods.
- 11) Whether alleged deductions from employees paid in part by check were withholding taxes payable by the employee and properly deducted from the employee's pay and/or otherwise authorized by law and/or by the employee.
- 12) Whether Plaintiffs' claims are barred in whole or in part because Defendants lacked actual or constructive knowledge of any uncompensated time or work performed by Plaintiffs.
- 13) If there was any violation of either the FLSA or NYLL, which Defendants deny, such was not willful nor was such a policy or practice of any Defendant.
- 14) Defendants dispute Plaintiffs' claim for liquidated damages for spread of hours pay and further contend that liquidated damages may not include spread of hours pay since liquidated damages is limited to underpayment of wages only, NYLL §§190(1), 198(1-a), 652, 663(1), and spread of hours is not payment of wage or payment for time worked or work performed, 12 NYCRR 146-1.6.
- 15) Whether allegations in Doc 103, CAC, ¶¶234-238 and 240 are judicial admissions binding on Plaintiff Zhai at trial, Official Committee v Coopers & Lybrand, 322 F.3d 147, 167 (2nd Cir. 2003).

V. JURY TRIAL & TRIAL LENGTH

Plaintiffs' Statement

This matter will be tried to a jury. Given the number of witnesses and the need for interpretation, jury selection, charge, and deliberation, Plaintiffs estimate that trial of this matter could take up to ten (10) days.

Defendants' Statement

Defendants' agree this jury trial could take ten (10) days.

VI. JURY SUMMARY

Good morning, ladies and gentlemen, and thank you for your service. The case before you concerns claims by 5 workers in a Midtown restaurant and 4 workers in a Flushing restaurant, the Plaintiffs, brought against the respective owners and managers of both restaurants, the Defendants, whom the Plaintiffs allege were their employers. Plaintiffs claim they were not paid the hourly minimum wage and/or hourly overtime according to federal and New York state law, that they were not paid for spread of hours and that they were not provided adequate notice of their wage rates when they were hired and adequate wage statements with their pay.

Defendants claim that at all relevant times the 2 restaurants are separately and independently owned and managed - that there is no centralized control over labor relations in the 2 restaurants - and Defendants deny the 2 restaurants are part of a single integrated enterprise. Each restaurant asserts that it paid its workers hourly minimum wage for up to 40 hours per week and hourly overtime at time and a half for all hours over 40 hours per week, if any, according to federal and New York state law. Midtown Defendants acknowledge they failed to pay spread of hours. Flushing Defendants assert they paid spread of hours. Defendants assert that in most cases they provided most Plaintiffs with time of hire wage notices – and that they were not required to provide certain Plaintiffs with time of hire wage notices. Defendants acknowledge they did not provide Plaintiffs with adequate wage statements with their pay. However, Midtown and Flushing Defendants assert that except for some isolated inadvertent mistakes – many of which were corrected when discovered - they made complete and timely payment of all wages to Plaintiffs and that they should not be liable for notice penalties.

VII. JURY LIST OF PROPER NOUNS

- 1) ARAGON CARDOSO CRUZ;
- 2) MAXIMINO RAYMUNDO;
- 3) GLORIA PEREZ MENDEZ;
- 4) CLARA FLORES;
- 5) REYES PEREZ GUERRERO;

- 6) ALBERTO SALDIVIA;
- 7) HAI HUA ZHAI;
- 8) LIANQIN LU;
- 9) BINGBO XU;
- 10) Kiu Sang Si a/ka/ Joseph Si
- 11) Yiu Fai Fong
- 12) Tun Yee Lam a/k/a Peter Lam
- 13) William Ko
- 14) Gui Bing Shi
- 15) Jian Jin Chen a/k/a Dawson Chen
- 16) Jeffrey Eng, CPA
- 17) Susan Lowe
- 18) SHANGHAI CITY CORP d/b/a Joe's Shanghai (in Manhattan);
- 19) EAST BROTHER CORP d/b/a Joe's Shanghai (in Flushing); and
- 20) SHANGHAI ORIGINAL INC. d/b/a Joe's Shanghai (in Flushing)

VIII. CONSENT TO MAGISTRATE

Not all parties have consented to trial of this case by a magistrate judge.

IX. TRIAL WITNESSES

Plaintiffs'

- 1) Plaintiff ARAGON CARDOSO CRUZ (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants;

- 2) Plaintiff MAXIMINO RAYMUNDO (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants;
- 3) Plaintiff GLORIA PEREZ MENDEZ (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which she worked for Defendants; how many hours she worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time she received payment from Defendants;
- 4) Plaintiff CLARA FLORES (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which she worked for Defendants; how many hours she worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time she received payment from Defendants;
- 5) Plaintiff REYES PEREZ GUERRERO (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants;
- 6) Plaintiff ALBERTO SALDIVIA (in person, Spanish interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants;
- 7) Plaintiff HAI HUA ZHAI (in person, Mandarin interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; Plaintiff did not receive adequate paystub notice every time he

received payment from Defendants; and Defendants did not reimburse him for cost and expenses for Plaintiff's delivery vehicles;

- 8) Plaintiff LIANQIN LU (in person, Mandarin interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants; and
- 9) Plaintiff BINGBO XU (in person, Mandarin interpreter to be provided by Plaintiffs), Plaintiff will testify to the time period which he worked for Defendants; how many hours he worked while employed by Defendants; how much Plaintiff was paid during his employment with Defendants; that Plaintiff did not receive any hiring notice from Defendants at the time of Plaintiff's hiring; and Plaintiff did not receive adequate paystub notice every time he received payment from Defendants;

Defendants'

- 1) Defendant Kiu Sang Si a/ka/ Joseph Si (in person) (Defendants will provide Cantonese interpreter), 50-03 Waterside Park, Whitestone, NY; will testify to the ownership and management of Original, the regular employment practices and policies of Original; the record keeping practices and policies of Original and Original's compliance with hourly minimum wage and hourly overtime requirements; the ownership and management of City, the regular employment practices and policies of City; the record keeping practices and policies of City and City's compliance with hourly minimum wage and hourly overtime requirements.
- 2) Defendant Yiu Fai Fong (in person) (Defendants will provide Cantonese interpreter), 87 Laconia Avenue, Staten Island, NY 10305; will testify to the ownership and management of Original and East Brother prior to 2017, the regular employment practices and policies of Original and East Brother prior to 2017; the record keeping practices and policies of Original and East Brother prior to 2017; the terms of employment of Named Plaintiff Maximino prior to 2017; notices of pay rate; meal break policy; the workdays and work hours of Named Plaintiff Maximino and compensation paid to Named Plaintiff Maximino prior to 2017 and Original's and East Brothers' compliance with hourly minimum wage, hourly overtime requirements and spread of hours law prior to 2017.
- 3) Defendant Tun Yee Lam (in person) (Defendants will provide Cantonese interpreter), 15 Courtney Loop, Staten Island, NY 10305; will testify to the ownership and management of Original and East Brother, the regular

employment practices and policies of Original and East Brother; the record keeping practices and policies of Original and East Brother; the terms of employment of Named Plaintiffs and opt-in Plaintiffs in Flushing; notices of pay rate; meal break policy; the workdays and work hours and compensation paid to Named Plaintiffs and opt-in Plaintiffs in Flushing and Original's and East Brothers' compliance with hourly minimum wage, hourly overtime requirements and spread of hours law.

- 4) William Ko, manager, 77 Sands Point Road, Port Washington NY 11050; will testify to management of the Midtown Restaurant, the regular employment practices and policies of the Midtown Restaurant; the record keeping practices and policies of the Midtown Restaurant; the terms of employment of Named Plaintiffs in Midtown; notices of pay rate; meal break policy; the workdays and work hours and compensation paid to Named Plaintiffs in Midtown and compliance with hourly minimum wage, hourly overtime requirements and spread of hours law.
- 5) Gui Bing Shi (in person) (Defendants will provide Mandarin interpreter), kitchen manager, 144-44 41st Avenue, Flushing, NY 11355; will testify to management of the kitchen at the Flushing Restaurant, general employment practices and policies of the Flushing Restaurant for kitchen workers; general record keeping practices and policies of the Flushing Restaurant for kitchen workers; the terms of employment of Chinese-speaking named plaintiffs and opt-in plaintiffs working in the kitchen; notices of pay rate for kitchen workers; meal break policy for kitchen workers; the workdays and work hours and compensation paid to named plaintiffs and opt-in plaintiffs working in the kitchen and compliance with hourly minimum wage, hourly overtime requirements and spread of hours for kitchen workers.
- 6) Jian Jin Chen (Dawson) (in person) (in English), manager, 4226 147th Street, Flushing, NY 11355; will testify to management of the Flushing Restaurant, the regular employment practices and policies of the Flushing Restaurant; the record keeping practices and policies of the Flushing Restaurant; the terms of employment of Named Plaintiffs and opt-in Plaintiffs in Flushing; notices of pay rate; meal break policy; the workdays and work hours and compensation paid to Named Plaintiffs and opt-in Plaintiffs in Flushing and compliance with hourly minimum wage, hourly overtime requirements and spread of hours law.
- 7) Jeffrey Eng, CPA, 3720 Prince Street, Suite 3E, Flushing NY 11354; will testify to record keeping practices and policies for check payroll journal and payroll checks; federal and state withholding taxes and forms; notices of pay rate; and compliance with hourly minimum wage, hourly overtime requirements, tip credits and spread of hours law.

- 8) Susan Lowe, 157-37 11th Avenue, Whitestone, New York 11357; will testify to the storage of boxes of Flushing restaurant records in the basement of her home and the circumstances of the infestation and disposal of said boxes of records.

X. DEPOSITION TESTIMONY

Plaintiffs

Plaintiffs reserve the right to utilize the deposition testimony of Defendants for impeachment purposes and/or to refresh a witness's recollection.

Defendants

Defendants will offer CAC judicial admissions, answers to written interrogatories and/or deposition testimony of Named Plaintiffs Lianqin Lu, Gloria Perez Mendez, Clara Flores, Reyes Perez Guerrero, Hai Hua Zhai aka Bin Xu, Aragon Cardoso Cruz, Maximino Raymundo and Opt-in Plaintiffs Alberto Saldivia and Bingbo Xu as adverse parties in Defendants' case in chief, as follows:

Lianqin Lu Deposition in Jin Case, 9/20/17, Case 1:16-cv-05633-ARR-JO, Tr. 1-4, 21-24, 31-35, 39-41.

Lianqin Lu Deposition in Huang Case, 7/8/2020, Tr. 1-5, 43-45, 73-76.

Gloria Mendez Deposition in Huang Case, 6/2/2020, Tr. 1-4, 30, 50 – 55, 62 – 63, 70 – 71, 74, 77-79, 125-127.

Clara Flores Deposition in Huang Case, 6/10/2020, Tr. 1-5, 62-63, 118 – 123, 127 – 149, 183-188.

Guerrero Deposition in Huang Case, 6/11/2020, Tr. 1-5, 23 - 25, 33 – 39, 51 – 68, 180-188.

Zhai Judicial Admissions in DOC 103, CAC, ¶¶234-238 and 240.

Zhai's answers to W/I #17, 19, 22, 23, 24 and 25.

Hai Hua Zhai aka Bin Xu Deposition in Jin Case, 1/10/18, Case 1:16-cv-05633-ARR-JO, Tr. 1-13, 25, 38 – 39, 44, 56-58.

Zhai Dep in Huang Case, 7/8/20, Tr. 1-5, 24, 27-29.

Cruz Deposition in Huang Case, 6/2/2020, Tr. 1-4, 37-38, 43, 45.

Cruz Deposition in Huang Case, 6/15/2020, Tr. 47-50, 54-59, 65 – 68, 79-81, 87 – 89, 95 – 98, 100 – 102, 104 – 105, 107 – 113, 115 – 118, 122 – 123, 129 – 131, 133 – 144, 154, 157.

Raymundo Dep, 6/12/2020, Tr. 1-5, 34 – 41, 43 – 49, 68 – 70, 75 – 76, 90 – 97, 99 – 101, 103 – 118, 123 – 125, 133 – 134, 136-140, 143 – 150, 152 – 155, 157, 160.

Raymundo's answers to W/I #20, 23 and 24.

Saldivia Deposition in Huang Case, 4/22/21, Tr. 1-5, 47, 49, 63-72, 106, 111 – 114, 120 – 121, 124-126.

Bingbo Xu Deposition in Huang Case, 4/22/21, Tr. 1-5, 11, 24, 27, 31 – 33, 41 – 42, 48 – 49, 58, 68, 75, 76-78.

Defendants further will offer deposition testimony in the event a witness becomes unavailable. Defendants further reserve the right to utilize the deposition testimony and/or answers to written interrogatories and/or affidavits of Named Plaintiffs Lianqin Lu, Gloria Perez Mendez, Clara Flores, Reyes Perez Guerrero, Hai Hua Zhai aka Bin Xu, Aragon Cardoso Cruz, Maximino Raymundo and Opt-in Plaintiffs Alberto Saldivia and Bingbo Xu for impeachment purposes and/or to refresh a witness's recollection.

XI. EXHIBITS

Plaintiffs'

<u>Ex.</u>	<u>Description</u>	<u>Objection</u>	<u>Response</u>
1	Joe's Shanghai Business Card Listing Locations (Plfs Doc Prod 000001-2)	Irrelevant – prior to relevant period.	Tends to show joint employment more likely than not. Fed. R. Evid. 401, 402
2	Lian Qin Lu paystubs (Plfs Doc Prod 000003-33)	Prod 0003-12 irrelevant – prior to relevant period.	Provide context
3	Gloria Perez Mendes paystubs (Plfs Doc Prod 000037-47)		

4	Schedule (Plfs Doc Prod 000054)		
5	Hai Hua Zhai schedules and time cards (Def-City-00241–271; 614–621)	Zhai may not contradict judicial admissions in Doc 103, CAC, ¶¶234-238 and 240; <u>Official Committee</u> , 322 F.3d 147, 167 (2 nd Cir. 2003).	Goes to show contradiction between true judicial statements and defendants' records
6	Reyes Perez Guerrero notices, schedules, and time cards (Def-City-00180–196; 547–581)		
7	Clara Flores notices, schedules, and time cards (Def-City-00109–179; 517–546)		
8	Gloria Perez Mendez notices, schedules, time cards, payroll journal (Def-City-0097–108; 285–302; 509–516)		
9	Lianqin Lu notices, schedules, time cards, payroll journal (Def-City-000059–96; 273–278; 334–379; 487–508)		
10	Aragon Cardoso Cruz notices, schedules, time cards (Def-East Brother-000003–77; 254–255; 264–326)		
11	Maximino Raymundo notices, schedules, time cards (Def-East Brother-000078–253; 256–263; 327–372; 570–595)		
12	Alberto Saldivia notices, schedules, timecards (Def-East Brother-000612–669)		
13	Bingbo Xu notices, schedules, timecards (Def-East Brother-614–621)		

14	Shanghai City entity information (Def-City-000001–2)		
15	Shanghai City schedules (Def-City-000279–282)		
16	East Brother entity information (Def-East Brother-000001–02)		
17	East Brother schedules (Def-East Brother-000373–562)		

Defendants’

<u>Ex.</u>	<u>Description</u>	<u>Objection</u>	<u>Response</u>
DX-1*	Shanghai Original Inc.’s corporate entity information (DEF ORIGINAL – 00001–00002)		
DX-2*	Shanghai Duplicate Corp.’s corporate entity information (DEF DUPLICATE 00001 - 00002)		
DX-3*	Shanghai City Corp.’s corporate entity information (DEF CITY 00001 - 00002)		
DX-4*	East Brother Corp.’s corporate entity information (DEF EAST BROTHER – 00001 - 00002)		
DX-5*	Stock Transfer Agreement (DEF ORIGINAL – 00004 - 00006)		
DX-6*	Stock Transfer Agreement (DEF EAST BROTHER - 00563 - 00567)		

DX-7*	2011-12 Time Cards of Shanghai City for Lianqin Lu (DEF CITY - 00081 - 00096)		
DX-8*	2012-2014 Cash Payroll Records of Shanghai City for Lianqin Lu (DEF CITY - 00273 – 00278)		
DX-9*	2012-15 Payroll Check Journal of Shanghai City for Lianqin Lu (DEF - CITY - 00334 - 00379)		
DX-10*	2012-15 W-2's of Shanghai City for Lianqin Lu (DEF - CITY - 00380 - 00383)		
DX-11*	2013-15 Time Cards for Lianqin Lu (DEF - CITY - 00063 - 00080)		
DX-12*	2013-15 Shanghai City color time cards for Lianqin Lu (DEF - CITY - 00487 – 00508)		
DX-13*	2014-2015 Notice of Pay Rate and Cash Payroll Records for Lianqin Lu (DEF - CITY 00059 – 00060, 00062)		
DX-14*	NYS ID Card for Lianqin Lu (from Jin Case deposition) (DEF - CITY - 00272)		
DX-15*	2016 W-2 for Gloria Perez (DEF - CITY - 00097)		
DX-16*	2016-17 Payroll Records and Time Cards for Gloria Perez (DEF - CITY - 00098 - 00108)		
DX-17*	2016-17 color time cards for Gloria Perez Mendez (DEF - CITY - 00509 – 00516)		
DX-18*	2016-17 Payroll Check Journal for Gloria Perez (DEF - CITY - 00285 – 00302)		

DX-19*	2016-17 W-2's for Gloria Perez (DEF - CITY - 00303 – 00304)		
DX-20*	2017 facial scan reports for Gloria Perez Mendez (DEF - CITY - 00622 – 00636)		
DX-21*	2012-16 Payroll Records and Time Cards for Clara Flores (DEF - CITY - 00112 - 00179)		
DX-22*	2013-16 color time cards for Clara Flores (DEF - CITY - 00517 – 00546)		
DX-23*	2014-16 Notices of Pay Rate for Clara Flores (DEF - CITY - 00109 - 00111)		
DX-24*	2011-17 Payroll Records and Time Cards for Reyes Perez (DEF - CITY - 00183 - 00196)		
DX-25*	2013-16 color time cards for Reyes Perez Guerrero (DEF - CITY - 00547 – 00581)		
DX-26*	2014-16 Notices of Pay Rate for Reyes Perez (Def - City 00180 - 00182)		
DX-27*	2017 facial scan reports for Reyes Perez Guerrero (DEF - CITY - 00637 – 00640)		
DX-28*	Provisionally (see Defendants' Defense #15 above) 12/29/13 - 6/28/14 color payroll record for Hai Hua Zhai aka Bin Xu (DEF - CITY – 00641)		

DX-29*	Provisionally (see Defendants' Defense #15 above) 2013-15 color time cards for Hai Hua Zhai aka Bin Xu (DEF - CITY - 00614 – 00621)		
DX-30*	Provisionally (see Defendants' Defense #15 above) 2013-15 Notice of Pay Rate, Payroll Records and Time Cards for Hai Hua Zhai aka Xu (DEF - CITY - 00241 - 00271)		
DX-31*	Provisionally (see Defendants' Defense #15 above) 2014 Notice of Pay Rate for Hai Hua Zhai aka Xu (DEF - CITY 00240)		
DX-32*	3/19/18 – 4/14/18 Pay Roll Records and Time Cards for Luis Aragon Cardoso Cruz (Def - East Brother - 00003 - 00008)		
DX-33*	3/19/18 – 4/14/18 Corrected Pay Roll Records for Luis Aragon Cardoso Cruz (DEF - EAST BROTHER - 00254 - 00255)		
DX-34*	4/15/18 – 5/26/18 Pay Roll Records and Time Cards for Luis Aragon Cardoso Cruz (Def East Brother 00264 - 00273)		
DX-35*	5/10/2018 Notice of Pay Rate for Luis Aragon Cardoso Cruz (DEF - EAST BROTHER - 00672)		
DX-36*	5/27/18 – 12/22/18 Pay Roll Records and Time Cards for Luis Aragon Cardoso Cruz (DEF - EAST BROTHER - 00274 -		
DX-37*	12/23/18 – 1/19/19 Pay Roll Records and Time Cards for Luis Aragon Cardoso Cruz (DEF - EAST BROTHER - 00071 -		
DX-38*	1/11/2019 Notice of Pay Rate for Luis Aragon Cardoso Cruz (DEF - EAST BROTHER - 00009 - 00012)		

DX-39*	1/20/19 – 2/16/19 Pay Roll Records and Time Cards for Cardoso Cruz (DEF - EAST BROTHER - 00013 - 00019)		
DX-40*	2/17/19 – 3/16/19 Pay Roll Records and Time Cards for Cardoso Cruz (DEF - EAST BROTHER - 00020 - 00026)		
DX-41*	3/17/19 – 4/13/19 Pay Roll Records and Time Cards for Cardoso Cruz (Def - East Brother - 00027 - 00033)		
DX-42*	4/14/19 – 5/11/19 Pay Roll Records and Time Cards for Cardoso Cruz (DEF - EAST BROTHER - 00034 - 00040)		

DX-43*	5/12/19 – 6/8/19 Pay Roll Records and Time Cards for Cardoso Cruz (Def -East Brother - 00041 - 00047)		
DX-44*	6/9/19 – 7/6/19 Pay Roll Records and Time Cards for Cardoso Cruz (DEF - EAST BROTHER - 00048 - 00051)		
DX-45*	7/7/19 – 8/3/19 Pay Roll Records and Time Cards for Cardoso Cruz (Def - East Brother - 00052 - 00056)		
DX-46*	8/4/19 – 8/31/19 Pay Roll Records and Time Cards for Cardoso Cruz (DEF - EAST BROTHER - 00057 - 00063)		
DX-47*	9/1/19 – 9/28/19 Pay Roll Records and Time Cards for Cardoso Cruz (Def East Brother 00064 - 00070)		
DX-48*	2018-19 color time cards for Cardoso Cruz (DEF - EAST BROTHER - 00596 – 00611)		
DX-49*	5/4/2011 Notice of Pay Rate for Maximino Raymundo (DEF - ORIGINAL - 00003)		

DX-50*	10/31/16 – 11/27/16 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00188 -		
DX-51*	11/27/16 – 12/24/16 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00191 - 00193)		
DX-52*	1/1/17 – 1/21/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00078 - 00080)		
DX-53*	1/22/17 – 2/18/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00081 - 00083)		
DX-54*	2/19/17 – 3/18/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00084 - 00086)		
DX-55*	3/7/2017 Notice of Pay Rate for Maximino (DEF - EAST BROTHER - 00194)		
DX-56*	3/19/17 – 1/6/18 Work Schedule for Maximino Raymundo (DEF - EAST BROTHER - 00373 - 00418)		

DX-57*	3/19/17 – 4/15/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00087 - 00093)		
DX-58*	4/16/17 – 5/13/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00094 - 00101)		
DX-59*	5/14/17 – 6/10/17 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00102 - 00108)		

DX-60*	6/11/17 – 7/8/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00109 - 00115)		
DX-61*	7/9/17 – 8/5/17 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00116 - 00122)		
DX-62*	8/6/17 – 9/2/17 Pay Roll Records and Time Cards for Maximino (DEF -EAST BROTHER -00123 - 00129)		
DX-63*	9/3/17 – 9/30/17 Pay Roll Records and Time Cards for Maximino (DEF -EAST BROTHER -00130 - 00136)		
DX-64*	10/1/17 – 10/28/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00137 - 00143)		
DX-65*	10/29/17 – 11/25/17 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00144 - 00151)		
DX-66*	11/26/17 – 12/23/17 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00152 - 00159)		
DX-67*	12/24/17 – 1/20/18 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00160 - 00167)		
DX-68*	1/7/18 – 1/5/19 Work Schedule for Maximino Raymundo and 2/18/18 – 1/5/19 Work Schedule for Luis Aragon (DEF - EAST BROTHER - 00419 - 00492)		
DX-69*	1/21/18 – 2/17/18 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00168 - 00175)		
DX-70*	2/18/18 – 3/17/18 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00176 - 00181)		

DX-71*	3/18/18 – 4/14/18 Pay Roll Records and Time Cards of East Brother for Maximino Raymundo (DEF - EAST BROTHER - 00182 - 00187)		
DX-72*	12/31/17 – 4/14/18 Corrected Pay Roll Records of East Brother for Maximino Raymundo Astudillo (Def East Brother 00256 - 00263).		
DX-73*	4/15/18 – 5/19/18 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00327 - 00335)		
DX-74*	5/27/18 – 12/22/18 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00336 - 00372)		
DX-75*	12/23/18 – 1/19/19 Pay Roll Records and Time Cards for Maximino Raymundo (Def - East Brother - 00247 - 00253)		
DX-76*	1/6/19 – 9/28/19 Work Schedule of East Brother for Maximino Raymundo and Luis Aragon (DEF - EAST BROTHER - 00493 - 00562)		
DX-77*	1/11/2019 Notice of Pay Rate for Maximino Raymundo (DEF - EAST BROTHER - 00195 - 00198)		
DX-78*	1/20/19 – 2/16/19 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00199 - 00205)		
DX-79*	2/17/19 – 3/2/19 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00206 - 00209)		
DX-80*	4/14/19 – 5/11/19 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00210 - 00216)		
DX-81*	5/12/19 – 6/8/19 Pay Roll Records and Time Cards for Maximino Raymundo (DEF - EAST BROTHER - 00217 - 00223)		

DX-82*	6/9/19 – 7/6/19 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00224 - 00227)		
DX-83*	7/7/19 – 8/3/19 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00228 -		
DX-84*	8/4/19 – 8/31/19 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00233 - 00239)		
DX-85*	9/1/19 – 9/28/19 Pay Roll Records and Time Cards for Maximino (DEF - EAST BROTHER - 00240 - 00246)		
DX-86*	Nov 2016 - Sept 2019 East Brother color time cards for Maximino Raymundo (DEF - EAST BROTHER - 00570 – 00595)		
DX-87*	5/27/18 – 11/24/18 Notice of Pay Rate, Pay Roll Records and Color Time Cards for opt-in Plaintiff Alberto Saldivia (DEF - EAST BROTHER - 00612 – 00669)		
DX-88*	2/24 – 3/2/19 Pay Roll Record for opt-in Plaintiff Bingbo Xu (DEF - EAST BROTHER - 00670 – 00671)		

XII. STATEMENT OF DAMAGES

See attached.

XIII. UNANIMITY OF VERDICT

As the parties agreed at the Final Pretrial Conference on July 7, 2022, any jury verdict shall be unanimous.

Respectfully submitted,

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Service of a copy of this order shall be made by the Clerk of this Court by forwarding a copy hereof to all parties.

Dated: New York, NY
June 29, 2022

SO ORDERED



Hon. Lewis J. Liman, U.S.D.J.

7/8/2022